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WASHINGTON, DC 20006		

EXAMINER
VETTER, DANIEL

ART UNIT	PAPER NUMBER
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/623,134	SANDOR, RICHARD L.
Office Action Summary	Examiner	Art Unit	
	DANIEL P. VETTER	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>21 July 2008</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-12,21,23,24 and 37-49</u> is/are pending in the application.

   4a) Of the above claim(s) <u>21,23,24,38 and 39</u> is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-12,37 and 40-49</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a) ☐ All b) ☐ Some * c) ☐ None of:

   1. ☐ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____.

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Status of the Claims

1.   Claims 1-12, 21, 23, 24, and 37-39 were previously pending in this application.
Claims 1, 11, 37-39 were amended, and new claims 40-49 were added in the reply filed
July 21, 2008. Claims 1-12, 21, 23, 24, and 37-49 are currently pending in this
application.

Continued Examination Under 37 CFR 1.114

2.   A request for continued examination under 37 CFR 1.114, including the fee set
forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this
application is eligible for continued examination under 37 CFR 1.114, and the fee set
forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action
has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 21,
2008 has been entered.

Response to Arguments

3.   Applicant's arguments with respect to the rejections made under §§ 102(e) and
103(a) have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

4.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

5.   Claims 44-46 are rejected under 35 U.S.C. 101 because the claimed invention is
directed to non-statutory subject matter.

6.   Claims 44-46 are directed to a series of steps. In order for a series of steps to be
considered a proper process under § 101, a claimed process should either: (1) be tied
to another statutory class (such as a particular apparatus) or (2) transform underlying

subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus that accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). The claims do not recite any specific computerized or mechanical apparatus used to perform the trading, only a nominal recitation in the preamble that the method is "computer-implemented" which does not materially affect any of the subsequently recited steps. And while the claimed invention is related to emission reduction, no step is actually implemented to affect a physical result or transformation in the real world. The trading recited is done with abstract allowances and not real world transformed objects. As such, the claims concretely identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112

7.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8.   Claims 40-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9.   Claims 40, 42, and 43 recite that "allowance(s) is/are allocated." This seems to require that an action or step of allocation is performed to meet the requirements of the claim, however these claims depend from system claims and not from process claims (examiner notes that claim 42 incorrectly depends from "the method of claim 37"). A single claim that claims both an apparatus and the method steps of using the apparatus is indefinite. *IPXL Holdings v. Amazon.com, Inc.*, 430 F.2d 1377, 1384, 77 USPQ2d

1140, 1145 (Fed. Cir. 2005). These claims do not properly apprise the public as to what would constitute infringement (i.e., creation of the claimed system or the act of using it) and accordingly are rejected as vague and indefinite under § 112, second paragraph.

10.   Claim 41 recites that "the reduction schedule comprises a different percentage of a baseline for each of the individual participants for each of a plurality of years." It is unclear if the percentages are required to be different among each of the participants, each of the years, or both. Examiner is interpreting this to mean that the schedule's percentage of the baseline will vary over different years.

11.   Claim 43 recites the limitation "the processor" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

12.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13.   Claims 1, 3, 5-7, 9-11, 40, 41, and 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soestbergen, et al., U.S. Pat. Pub. No. 2002/0143693 (Reference A13 of the IDS submitted Jan. 5, 2006) in view of Raines, et al., U.S. Pat. Pub. No. 2003/0229572 (Reference A16 of the IDS submitted Jan. 5, 2006).

14.   As per claim 1, Soestbergen teaches an emissions reduction trading system comprising: a registry that stores emission allowance and offset holding information for participants in a greenhouse gas emissions market (¶ 0014), wherein the emission allowance and offset holding information is allocated to individual participants based on an emission reduction schedule established (¶¶ 108-09); and a trading platform communicatively coupled to the registry (¶¶ 0013-14), the trading platform being configured to enable trades of emission allowances and offsets by participants (¶ 0014). Soestbergen does not explicitly teach that the schedule is established for the individual

participants; which is taught by Raines (Fig. 4). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the individual schedules of Raines in order to convert specific reductions based upon an emissions baseline into tradable commodities (as taught by Raines, ¶ 0077). Moreover, this is merely a combination of elements already known in the field of emissions reduction credits. The combined elements serve no additional function than they already did individually, and one skilled in the art would have recognized that the combination could be implemented through routine engineering producing predictable results.

15.   As per claim 3, Soestbergen in view of Raines teaches the system of claim 1 as described above. Raines further teaches the trading platform can perform auctions of exchange allowances and/or offsets (¶ 0004). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate this element for the reasons stated above with respect to claim 1.

16.   As per claim 5, Soestbergen in view of Raines teaches the system of claim 1 as described above. Soestbergen further teaches the greenhouse gas emissions market comprises multi-sector and multi-national components (¶¶ 0007-08).

17.   As per claim 6, Soestbergen in view of Raines teaches the system of claim 1 as described above. Soestbergen further teaches participants register projects that are issued offsets (¶ 0071) amounting to at least a minimum level of mitigated tons of CO_2 per year (¶¶ 0070, 0108).

18.   As per claim 7, Soestbergen in view of Raines teaches the system of claim 6 as described above. Raines further teaches participants not having projects with offsets amounting to at least the minimum level of offset issuance per year are aggregated into groups having collective projects with collective offsets (¶ 0045) totaling at least the minimum level of issued tons of CO_2 per year (¶ 0320). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Raines because many small residential reductions are in quantities too small to be marketable (as taught by Raines; ¶ 0014), as well as for the reasons stated above with respect to claim 1.

19.   As per claim 9, Soestbergen in view of Raines teaches the system of claim 1 as described above. Soestbergen further teaches the emission allowance and offset holding information stored by the registry includes baseline information (¶ 0106).

20.   As per claim 10, Soestbergen in view of Raines teaches the system of claim 9 as described above. Soestbergen further teaches the registry further includes reduction schedule, and mitigation quantity information (¶ 0108).

21.   As per claim 11, Soestbergen in view of Raines teaches the system of claim 1 as described above. Soestbergen further teaches the trading platform implements a standardized greenhouse gas emissions trading program among or between participants from a number of business sectors (¶ 0196).

22.   As per claim 40, Soestbergen in view of Raines teaches the system of claim 1 as described above. Raines further teaches the emission allowances are allocated to the participant at the beginning of a period in which a participant has undertaken a reduction commitment (¶ 0077). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate this element for the reasons stated above with respect to claim 1.

23.   As per claim 41, Soestbergen in view of Raines teaches the system of claim 1 as described above. Raines further teaches the reduction schedule comprises a different percentage of a baseline for each of the individual participants for each of a plurality of years (¶¶ 0077, 90). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate this element for the reasons stated above with respect to claim 1.

24.   As per claim 44, Soestbergen teaches a computer-implemented emissions reduction trading method comprising: establishing a registry that stores a plurality of emission allowances for participants in an emissions market (¶ 0014), wherein each of the plurality of emission allowances is allocated to the individual participants based on the emission reduction schedule (¶¶ 108-09); and trading of at least one of the allocated emission allowances (¶ 0014). Soestbergen does not explicitly teach that the reduction schedule is for the particular participants; which is taught by Raines (Fig. 4). It would

have been prima facie obvious to one having ordinary skill in the art at the time of
invention to incorporate the individual schedules of Raines in order to convert specific
reductions based upon an emissions baseline into tradable commodities (as taught by
Raines, ¶ 0077). Moreover, this is merely a combination of elements already known in
the field of emissions reduction credits. The combined elements serve no additional
function than they already did individually, and one skilled in the art would have
recognized that the combination could be implemented through routine engineering
producing predictable results.

25.   As per claim 45, Soestbergen in view of Raines teaches the method of claim 44
as described above. Raines further teaches the emission allowances are traded by the
participant through an auction (¶ 0004) prior to true-up (¶ 0319). It would have been
prima facie obvious to one having ordinary skill in the art at the time of invention to
incorporate this element for the reasons stated above with respect to claim 44.

26.   As per claim 46, Soestbergen in view of Raines teaches the method of claim 44
as described above. Raines further teaches the emission allowances are allocated to
the participant at the beginning of a period in which a participant has undertaken a
reduction commitment (¶ 0319). It would have been prima facie obvious to one having
ordinary skill in the art at the time of invention to incorporate this element for the
reasons stated above with respect to claim 44.

27.   As per claim 47, Soestbergen teaches a processor-executable medium
comprising instructions that when executed by a processor causes the processor to
perform steps for emissions reduction trading, the steps comprising: establishing a
registry that stores emission allowance information for participants in a greenhouse gas
emissions market (¶ 0014); allocating an emission allowance associated with the
emission allowance information for each of the participants individually based on an
emission reduction schedule (¶¶ 108-09). Soestbergen does not explicitly teach that
the reduction schedule is for the particular participants; which is taught by Raines (Fig.
4). It would have been prima facie obvious to one having ordinary skill in the art at the
time of invention to incorporate the individual schedules of Raines in order to convert

specific reductions based upon an emissions baseline into tradable commodities (as taught by Raines, ¶ 0077). Soestbergen does not teach determining true-ups for the participants based on actual emission released during a compliance period in which a participant has agreed to reduce emissions, and the emission reduction schedule established for the individual participant, wherein the allocating of the emission allowance is performed prior to determining the true-ups; which are also taught by Raines (¶¶ 0319, 327, 345, 352). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above true-up procedure of Raines because this is merely a combination of elements already known in the field of emissions reduction credits. The combined elements serve no additional function than they already did individually, and one skilled in the art would have recognized that the combination could be implemented through routine engineering producing predictable results.

28.   Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soestbergen, et al. in view of Raines, et al. as applied to claim 1 above, further in view of Sharp, et al., U.S. Pat. Pub. No. 2002/0111892 (Reference A of the PTO-892 part of paper no. 20070611).

29.   As per claim 2, Soestbergen in view of Raines teaches the system of claim 1 as described above. Soestbergen in view of Raines does not teach a guarantee mechanism that ensures next-day payment for exchange-cleared trades transacted using the trading platform despite failure of buyer to execute payment. Sharp teaches a guarantee mechanism that ensures payment for exchange-cleared trades transacted using the trading platform despite failure of buyer to execute payment (¶ 0141). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Sharp into the system taught by Soestbergen to facilitate an automated payment mechanism in an auction-based marketplace (as taught by Sharp; ¶¶ 0141-42). Sharp further teaches the payment occurs on the second day and on thirty days after the trade is completed (¶ 0085) but

does not explicitly teach the payment occurs on the next day. However, it would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the payment is next-day payment because where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Furthermore, Applicant has not demonstrated the criticalities of the next-day time period rather than another time period such as those taught by Sharp (¶ 0085).

30.   Claims 37, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soestbergen, et al. in view of Raines, et al. and Sharp, et al.

31.   As per claim 37, Soestbergen teaches an emissions reduction trading system comprising: a registry that stores emission allowance and offset holding information for individual participants in a greenhouse gas emissions market (¶ 0014), wherein a quantity of the emission allowance or offset holdings is based on an emission reduction schedule established (¶¶ 108-09); and a trading platform communicatively coupled to the registry (¶¶ 0013-14), the trading platform being configured to enable trades of emission allowances and offsets by participants (¶ 0014). Soestbergen does not explicitly teach that the schedule is established for the individual participants; which is taught by Raines (Fig. 4). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the individual schedules of Raines in order to convert specific reductions based upon an emissions baseline into tradable commodities (as taught by Raines, ¶ 0077). Soestbergen does not teach a guarantee mechanism that ensures payment for exchange-cleared trades transacted using the trading platform; which is taught by Sharp (¶ 0141). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Sharp into the system taught by Soestbergen to facilitate an automated payment mechanism in an auction-based marketplace (as taught by Sharp; ¶¶ 0141-42). Moreover, this is merely a combination of old and already known

elements. The combined elements serve no additional function than they already did individually, and one skilled in the art would have recognized that the combination could be implemented through routine engineering producing predictable results.

32.   As per claim 42, Soestbergen in view of Raines and Sharp teaches the system of claim 37 as described above. Raines further teaches the quantity of emission allowance is allocated to each of the individual participants based on the participant's baseline and a percentage below the baseline (¶ 0091), wherein the percentage is the same for a plurality of individual participants (¶ 0327; examiner is interpreting a default emissions factor as one that is the same for a plurality of individual participants). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate this feature for the reasons stated above with respect to claim 37.

33.   As per claim 43, Soestbergen in view of Raines and Sharp teaches the system of claim 37 as described above. Raines further teaches the processor calculates emission allowances which are allocated to the individual participants at the beginning of the period in which the emissions for the allowances are to be generated by the participant (¶ 0320). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate this feature for the reasons stated above with respect to claim 37.

34.   Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soestbergen, et al. in view of Raines, et al. as applied to claim 3 above, further in view of *Acid Rain Program: Allowance Auction and Electronic Allowance Transfer*, June 6, 1996, Federal Register, Vol. 61 No. 110, pages 28995-98 (Reference U of the PTO-892 part of paper no. 20070611; hereinafter "EPA Notice").

35.   As per claim 4, Soestbergen in view of Raines teaches the system of claim 3 as described above. Soestbergen in view of Raines does not teach the auctions comprise single-clearing price auctions or discriminating price auctions; which is taught by EPA Notice (page 1). It would have been prima facie obvious to one having ordinary skill in

the art at the time of invention to incorporate the above auctions of EPA Notice because these are both types of auctions that are used by organizations such as the EPA to distribute allowances (as taught by EPA Notice; page 1). Moreover, this is merely a combination of elements already known in the field of emissions reduction credits. The combined elements serve no additional function than they already did individually, and one skilled in the art would have recognized that the combination could be implemented through routine engineering producing predictable results.

36.   Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soestbergen, et al. in view of Raines, et al. as applied to claim 1 above, further in view of Tuck, et al., U.S. Pat. No. 6,115,698 (Reference A8 of the IDS submitted Jan. 5, 2006).

37.   As per claim 8, Soestbergen in view of Raines teaches the system of claim 1 as described above. Soestbergen further teaches the trading platform communicates with the registry to confirm identities of participants buying and selling trades (¶ 0088). Soestbergen in view of Raines does not teach while providing anonymous trading to the participants; which is taught by Tuck (column 2, line 14). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Tuck into the system taught by Soestbergen because anonymous trading is required of a true market (as taught by Tuck; column 2, lines 14-15).

38.   As per claim 12, Soestbergen in view of Raines teaches the system of claim 1 as described above. Soestbergen further teaches the trades of emission allowances and offsets by participants are done (¶ 0014). Soestbergen in view of Raines does not teach the trades are done in real-time; which is taught by Tuck (column 2, lines 7-8). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the above teachings of Tuck to allow participants to consummate the best opportunities (as taught by Tuck; column 2, lines 8-9).

39.   Claims 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Soestbergen, et al. in view of Raines, et al. as applied to claim 47 above, further in

view of Official Notice.

40.   As per claim 48, Soestbergen in view of Raines teaches the medium of claim 47

as described above. Soestbergen further teaches registering, by the individual

participant, one or more projects that are issued an emission offset after the occurrence

of a reduction or mitigation activity has been verified (¶ 0092). It would have been prima

facie obvious to one having ordinary skill in the art at the time of invention to incorporate

this feature for the reasons stated above with respect to claim 47. Soestbergen in view

of Raines does not explicitly teach that the offset is designated with a vintage year

representing the year in which the reduction or mitigation activity took place. Official

Notice is taken that it is old and well-known in the art of emission credit trading that

offsets are designated with a particular vintage in accordance with year of activity. It

would have been prima facie obvious to one having ordinary skill in the art at the time of

invention to incorporate the above finding of Official Notice, for example, to comply with

regulatory requirements that offsets or allowances be of a certain year to be valid for

use for activity occurring in that year. Moreover, this is merely a combination of old and

already known elements. The combined elements serve no additional function than

they already did individually, and one skilled in the art would have recognized that the

combination could be implemented through routine engineering producing predictable

results.

41.   As per claim 49, Soestbergen in view of Raines teaches the medium of claim 47

as described above. Raines further teaches

receiving, from the individual participant, a commitment to reduce greenhouse gas

emissions from year to year during a period of one or more years (¶¶ 0020, 0109); and

issuing the emission allowance for each year of the phase at the time the individual

participant commences participation in that phase (¶ 0319), wherein the emission

allowance is issued in a quantity based on the emission reduction schedule established

for the individual participant (¶ 0319). It would have been prima facie obvious to one

having ordinary skill in the art at the time of invention to incorporate this feature for the reasons stated above with respect to claim 47. Soestbergen in view of Raines does not explicitly teach that the allowance is designated with a vintage year, however as above, Official Notice is taken that this is old and well-known. It would be obvious to incorporate for the same reasons above as in claim 48.

Conclusion

42.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL P. VETTER whose telephone number is (571)270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHN W HAYES/
Supervisory Patent Examiner, Art Unit 3628